

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

In the Matter of the Fact-Finding
Conference Relating to Timothy R.
Helwig's Purchase of PERA Service
Credit

**RECOMMENDATION
ON MOTIONS FOR
SUMMARY DISPOSITION**

Administrative Law Judge Bruce H. Johnson conducted a fact-finding conference in this matter beginning at 10:00 a.m. on Friday, April 30, 2010, at the Office of Administrative Hearings, 320 West Second Street, Suite 714, Duluth, Minnesota.

Rory H. Foley, Assistant Attorney General, appeared at the fact-finding conference as the attorney for the staff of the Public Employees Retirement Association (PERA). James W. Balmer, Attorney at Law, of the firm Falsani, Balmer, Peterson, Quinn & Beyer, appeared at the fact-finding conference as the attorney for the Appellant, Timothy Helwig.

When the hearing began, counsel for both parties stipulated that no genuine issues of material fact exist with respect to the matters at issue in this proceeding. They also stipulated that the facts are accurately set forth in PERA Exhibits 1 through 15, which were received in evidence. Thereafter, counsel for both PERA and Mr. Helwig made oral motions for summary disposition. Both parties argued that they entitled to prevail on the merits as a matter of law. The hearing record closed on May 21, 2010, when all of the parties' post-hearing briefs were received.

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the PERA Board GRANT the PERA staff's Motion for Summary Disposition and DENY Mr. Helwig's Motion for Summary Disposition.

Dated: June 4, 2010

s/Bruce H. Johnson

BRUCE H. JOHNSON

Assistant Chief Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This Report is a recommendation, not a final decision. Under Minn. Stat. § 353.03,¹ the Board of Trustees of PERA will make the final decision after reviewing the record. The Board may adopt, reject or modify this Recommendation on Motions for Summary Disposition. Parties should contact the offices of the Public Employees Retirement Association of Minnesota, 60 Empire Drive, Suite 200, St. Paul, Minnesota 55103-2088, to find out how to file objections to this report or present further argument to the Board.

MEMORANDUM

I. Standards for Granting Summary Disposition

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and a party is entitled to judgment as a matter of law.² The Office of Administrative Hearings has generally followed in contested case proceedings the standards developed in the state court system for considering motions for summary judgment.³ A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.⁴

¹ Except where otherwise indicated, all references to Minnesota Statutes are to the 2008 edition and 2009 supplement.

² *Louwegie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minnesota Court of Appeals 1985); Minnesota Rules, 1400.5500K; Minnesota Rules of Civil Procedure 56.03 (2005).

³ See, Minn. R. 1400.6600.

⁴ *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minnesota 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minnesota Court of Appeals 1984).

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary judgment, the nonmoving party must show that there are specific facts in dispute that have a bearing on the outcome of the case.⁵ When considering a motion for summary judgment, the tribunal must view the facts in the light most favorable to the non-moving party.⁶ All doubts and factual inferences must be resolved against the moving party.⁷ If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.⁸ Summary judgment should only be granted in those instances where there is no dispute of fact and where there exists only one conclusion.⁹

Here, both parties agree that no genuine issues of material fact exist and that the exhibits that PERA has placed into evidence fairly and accurately establish the material facts. Consequently, both parties have moved for summary disposition, and this matter can be adjudicated by applying the law to the uncontested facts.

II. Underlying Facts

Mr. Helwig began employment with the City of Duluth (the City) in 1978 and continued working for the City until May 14, 1982, when he enlisted in the U.S. Marine Corps. When Mr. Helwig entered the Marine Corps in May 1982, the City notified PERA that his employment had been terminated rather than advising PERA that he was placed on a military leave of absence from City employment.¹⁰ Mr. Helwig served on active duty with the Marine Corps until June 15, 1986, when he was honorably discharged.¹¹ On June 16, 1986, he was re-employed by the City. A few days later, on June 20, 1986, the City sent him correspondence listing the benefits to which he was then entitled, together with the dates on which each of those benefits would become effective. This listing included a statement of when his PERA benefits would resume, but it did not include information regarding any right he might have to purchase PERA service credit for the time he had spent in military service.¹² In 1986, it was not PERA's practice to specifically inform any returning veterans of their right to make a pension purchase upon their return to government service.¹³

It was in 1990, while reading a PERA handbook, that Mr. Helwig learned of his right to purchase PERA service credit for the time he had spent in military service.¹⁴ On October 19, 1990, he requested information from PERA regarding the cost of

⁵ *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minnesota 1988); *Hunt v. IBM Mid America Employees Federal*, 384 N.W.2d 853, 855 (Minnesota 1986).

⁶ *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minnesota Court of Appeals 1984).

⁷ See, e.g., *Thompson v. Campbell*, 845 F.Supp. 665, 672 (United States District Court, Minnesota 1994); *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minnesota 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minnesota 1971).

⁸ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-251 (1986).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Exhibits (Exs.) 1, 7 at p. 1.

¹² Ex. 7.

¹³ Ex. 8.

¹⁴ *Id.*

purchasing PERA service credit for the time he spent in the military.¹⁵ By letter dated November 15, 1990, PERA advised Mr. Helwig that the total cost of purchasing his service credit would be \$4,726.47; that the purchase of his service credit had to be completed by June 14, 1991; and that purchasing his service credit in installments for the next seven months would be \$675.21 per month.¹⁶

On June 12, 1992, PERA responded to another inquiry by Mr. Helwig about purchasing PERA service credit for his earlier military service. Under the law as it existed on June 12, 1992, there was five-year limitation on purchasing service credit for time spent in military service.¹⁷ In its response, PERA indicated to Mr. Helwig that the time had already expired for him to submit such an application.¹⁸

In a Winter 2003 newsletter to all PERA members, PERA advised them that the statute allowing them to purchase PERA service credit for past military service credit would expire on May 16, 2003, “[u]nless extended by the Legislature.” In fact, the Legislature subsequently did extend the right to PERA members to apply for past military service credit beyond May of 2003.¹⁹

In July 2009, Mr. Helwig again inquired of PERA about the possibility of purchasing PERA service credit for his past military service. By letter dated July 14, 2009, Lance LaFrombois of PERA’s Pension Services Division responded to Mr. Helwig’s inquiry. Mr. LaFrombois first stated:

Under state and federal law, you are eligible to purchase the service credit based on its actuarial value to the pension fund. The cost of that purchase is \$122,444.44. The actuarial cost represents the amount of money required to fund the cost of the additional benefit that the purchase adds to your future retirement benefit.²⁰

Mr. LaFrombois then went on to state:

The other method of purchasing military service credit (based on contributions you would have made to the pension fund during the military leave) is not an option for you. Under state and federal law (Minn. Stat. (2008) § 353.01 subd. 16(a)(7), 38 USC 4312(d)), military service personnel have the shorter of three times the length of their service or five (5) years past the conclusion of their military service, five years being the maximum amount of time to make this type of purchase.²¹

After receiving Mr. LaFrombois’ letter, Mr. Helwig contacted the U. S. Department of Labor (USDOL) for assistance in determining his employment rights under the

¹⁵ Ex. 1.

¹⁶ Exs. 2, 3.

¹⁷ See discussion in Part IV of the Memorandum that follows.

¹⁸ Ex. 4.

¹⁹ See discussion in Part IV of the Memorandum that follows.

²⁰ Ex. 6.

²¹ *Id.*

Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)²² and its predecessor Veterans' Reemployment Rights Act (VRR). Mr. Helwig told the USDOL that because of an error made by the City, PERA had recorded him as being terminated, rather than being on a military leave of absence when he joined the Marine Corps on May 14, 1982. As a consequence, when he resumed his City employment on June 16, 1986, PERA did not record him as returning from military leave. Mr. Helwig expressed his belief that the error resulted in PERA's failure to notify him of his statutory right to purchase PERA service promptly upon his return to City employment after being discharged from the Marine Corps.²³ By letter dated August 20, 2009, the USDOL indicated to PERA that it was conducting an inquiry on Mr. Helwig's behalf into whether an error in his file was affecting his ability to "buy back his military time."²⁴

By letter dated September 22, 2009, Assistant Attorney General Rory H. Foley, acting on behalf of PERA, replied to the USDOL's inquiry concerning Mr. Helwig's ability to purchase PERA service credit for his military time.²⁵ Mr. Foley first detailed the steps that PERA had taken to inform returning veterans of their right to make a pension service credit purchase upon when they returned to public employment after their military service. Second, Mr. Foley assured the USDOL that although Mr. Helwig's employment status may have been erroneously recorded as "terminated" when he joined the Marine Corps, that error had been corrected and did not affect his service credit purchase rights. Third, Mr. Foley indicated that under current federal and state law, Mr. Helwig was only eligible to purchase the service credit based on its actuarial value to the pension fund, then \$122,444.44. After receiving Mr. Foley's letter, the USDOL informed PERA on October 7, 2009, that it had concluded its investigation on Mr. Helwig's behalf and was closing its file.

By letter dated October 29, 2009, Mr. Helwig's counsel submitted a petition for review of PERA's determination of Mr. Helwig's right to purchase service credit for the period of his former military service, and this proceeding ensued.²⁶

III. Contentions of the Parties

Mr. Helwig argues that he should have received notice of his right to purchase PERA service credit for his military leave of absence immediately upon his return to work with the City on June 16, 1986. Such notice, Mr. Helwig argues, would have allowed him five years, rather than seven months, in which to pay for the service credit in monthly installments. He therefore argues that he is now entitled to purchase that service credit at its June 16, 1986, cost.

The PERA staff argues that a statutory deadline prevents Mr. Helwig from purchasing an allowable service credit under Minn. Stat. § 353.01, subd. 16. It further

²² Codified at 38 U.S.C. §§ 4301 – 4335 and 20 C.F.R. Part 1002.

²³ Ex. 7.

²⁴ *Id.*

²⁵ Ex. 8

²⁶ Ex. 14

argues that even if he is authorized to purchase an allowable service credit, the purchase must be based on the service credit's actuarial value to the PERA pension fund and not at its June 16, 1986, cost.

IV. Analysis

The five-year deadline in Minn. Stat. § 353.01, subd. 16, prevents him from purchasing allowable service credit for time spent in military service. However, the recently enacted Minn. Stat. § 353.01, subd. 16b, contains no deadline and does not expire until July 1, 2013. However, if he elects to proceed under that subdivision, its provisions require that his service credit be calculated in accordance with Minn. Stat. § 356.551, subd. 2, and he must purchase the service credit based on its actuarial value to the PERA pension fund.

A. Minn. Stat. § 353.01, subd. 16b, currently allows Mr. Helwig to purchase allowable service credit for his earlier active duty in the Marine Corps.

Minn. Stat. § 353.01, subd. 16 (1986) provided:

‘Allowable service’ means:

* * *

(5) Any period during which a member is on an authorized leave of absence to enter military service, provided that the member returns to public service upon discharge from military service pursuant to section 192.262, and pays into the fund employee contributions based upon the employee's salary at the date of return from military service. *After June 30, 1983, payment must be made within five years of the date of discharge from military service.* The amount of these contributions shall be in accord with the contribution rates and salary limitations, if any, in effect during such leave, plus interest thereon at six percent per annum compounded annually from the date of return to public service to the date payment is made. In such cases the matching employer contribution and additional employer contribution provided in section 353.27, subdivisions 3 and 3a, shall be paid by the department employing such member upon return to public service and the governmental subdivision involved is hereby authorized to appropriate money therefore. Such member shall not receive credit for any voluntary extension of military service at the instance of the member beyond the initial period of enlistment, induction or call to active duty. [Emphasis supplied.]

Although Minn. Stat. § 353.01, subd. 16, has been amended several times since 1986, the five-year limitation for purchasing service credit for time spent in military service has consistently remained in that subdivision. However, in its 2001 special session, the legislature did amend the subdivision to provide for a shorter deadline in some situations:

* * * Payment must be made within three times the length of the military leave period, or five years of the date of discharge from the military service, whichever is less.²⁷

Subsequent amendments to Minn. Stat. § 353.01, subd. 16, did not materially alter its deadline provisions. The current text of Minn. Stat. § 353.01, subd. 16, still provides contains the purchase deadline that the Legislature enacted in 2000:

* * * Payment of the member equivalent contributions must be made during a period that begins with the date on which the individual returns to public employment and that is three times the length of the military leave period, or within five years of the date of discharge from the military service, whichever is less. If the determined payment period is less than one year, the contributions required under this clause to receive service credit may be made within one year of the discharge date.²⁸

However, without amending the deadline provisions of Minn. Stat. § 353.01, subd. 16, the Legislature subsequently began giving veterans statutory deadline relief in other subdivisions of Minn. Stat. § 353.01. In 2000, the Legislature added a new subdivision 16a. That new subdivision effectively eliminated the deadline for purchasing service credit for time spent in military service for certain eligible public employees:

Subd. 16a. **Uncredited Military Service Credit Purchase.** (a) A public employee who has at least three years of allowable service with the public employees retirement association or the public employees police and fire plan and who performed service in the United States armed forces before becoming a public employee, or who failed to obtain service credit for a military leave of absence under subdivision 16, paragraph (h), is entitled to purchase allowable service credit for the initial period of enlistment, induction, or call to active duty without any voluntary extension by making payment under section 356.55 if the public employee is not entitled to receive a current or deferred retirement annuity from a United States armed forces pension plan and has not purchased service credit from any other defined benefit public employee pension plan for the same period of service.

(b) A public employee who desires to purchase service credit under paragraph (a) must apply with the executive director to make the purchase. The application must include all necessary documentation of the public employee's qualifications to make the purchase, signed written permission to allow the executive director to request and receive necessary verification of applicable facts and eligibility requirements, and any other relevant information that the executive director may require.

²⁷ 2001 Minn. Laws Sp. Sess. Ch. 10, art. 11, § 10.

²⁸ Minn. Stat. § 353.01, subd. 15 (2008).

(c) Allowable service credit for the purchase period must be granted by the public employees association or the public employees police and fire plan, whichever applies, to the purchasing public employee upon receipt of the purchase payment amount. Payment must be made before the effective date of retirement of the public employee.²⁹

The Legislature apparently intended that deadline relief to be a short-term, temporary measure. The new subdivision 16a, was initially given a sunset date of May 16, 2003.³⁰ However, in 2003, the legislature extended that sunset date to May 16, 2004.³¹ Next, in its 2004 session the Legislature extended the sunset date of subdivision 16a again to May 16, 2006,³² and in its 2005 session to May 16, 2007. However, there were no further extensions of the sunset date, and Minn. Stat. § 353.01, subd. 16a, expired on May 16, 2007.³³

Between May 16, 2007, and May 27, 2008, there was no statutory relief from the deadlines in Minn. Stat. § 353.01, subd. 16, in effect. However, in May 2008 the Legislature added another new subdivision to Minn. Stat. § 353.01 that again eliminated the deadline for purchasing service credit for time spent in military service for eligible public employees. Minn. Stat. § 353.01, subd. 16b, as amended in 2009,³⁴ now provides:

Subd. 16b. Uncredited military service credit purchase.

(a) A public employee who has at least three years of allowable service with the Public Employees Retirement Association or the public employees police and fire plan and who performed service in the United States armed forces before becoming a public employee, *or who failed to obtain service credit for a military leave of absence under subdivision 16, paragraph (a), clause (8)*, is entitled to purchase allowable service credit for the initial period of enlistment, induction, or call to active duty without any voluntary extension by making payment under section 356.551. This authority is voided if the public employee has purchased service credit from any other Minnesota defined benefit public employee pension plan, other than a volunteer fire plan, for the same period of service, or if the separation from the United States armed forces was under less than honorable conditions. [Emphasis supplied.]

(b) A public employee who desires to purchase service credit under paragraph (a) must apply with the executive director to make the purchase. The application must include all necessary documentation of

²⁹ 2000 Minnesota Laws, ch. 461, art. 4, §3, *codified as* Minn. Stat. § 353.01, subd. 16a.

³⁰ 2000 Minnesota Laws, ch. 461, art. 4, §4.

³¹ 2003 Minn. Laws Sp. Sess. Ch. 12, art. 6, § 3.

³² See 2004 Minn. Laws, ch. 267, art. 17, §5.

³³ Minnesota Statutes (2008) indicates that Minn. Stat. § 353.01, subd. 16a was repealed upon expiration of its last sunset date.

³⁴ Act of

the public employee's qualifications to make the purchase, signed written permission to allow the executive director to request and receive necessary verification of applicable facts and eligibility requirements, and any other relevant information that the executive director may require.

(c) Allowable service credit for the purchase period must be granted by the Public Employees Retirement Association or the public employees police and fire plan, whichever applies, to the purchasing public employee upon receipt of the purchase payment amount. Payment must be made before the public employee's termination of public service or termination of membership, whichever is earlier.

(d) This subdivision is repealed July 1, 2013.

The ALJ therefore concludes that PERA's July 14, 2009, determination that the statutory deadlines set forth in Minn. Stat. § 353.01, subd. 16(a)(7), precluded him from purchasing PERA service credit for his earlier active duty in the Marine Corps was literally correct. However, the determination was somewhat misleading because it failed to advise Mr. Helwig that he could pursue relief from the deadline by making an application under Minn. Stat. § 353.01, subd. 16b, at any time before "termination of public service or termination of membership, whichever is earlier."³⁵ Although an avenue exists for Mr. Helwig to purchase PERA service credit for the time he spent in the Marine Corps, the further question remains whether he is correct in claiming that he is now entitled to purchase that service credit at its June 16, 1986, cost.

B. Mr. Helwig's right is to purchase PERA service credit for his earlier military service based on its actuarial value to the pension fund.

Minn. Stat. § 353.01, subd. 16b, provides that a public employee may purchase PERA service credit for time previously spent in military service "by making payment under section 356.551." Minn. Stat. § 356.551, subd. 2(a) through (c) prescribes the amount that Mr. Helwig must now pay to obtain his service credit must be calculated:

(a) Unless the minimum purchase amount set forth in paragraph (c) applies, the prior service credit purchase amount is an amount equal to the actuarial present value, on the date of payment, as calculated by the chief administrative officer of the pension plan and reviewed by the actuary retained under section 356.214, of the amount of the additional retirement annuity obtained by the acquisition of the additional service credit in this section.

(b) Calculation of this amount must be made using the preretirement interest rate applicable to the public pension plan specified in section 356.215, subdivision 8, and the mortality table adopted for the public pension plan. The calculation must assume continuous future service in the public pension plan until, and retirement at, the age at which the

³⁵ Minn. Stat. § 353.01, subd. 16b.

minimum requirements of the fund for normal retirement or retirement with an annuity unreduced for retirement at an early age, including section 356.30, are met with the additional service credit purchased. The calculation must also assume a full-time equivalent salary, or actual salary, whichever is greater, and a future salary history that includes annual salary increases at the applicable salary increase rate for the plan specified in section 356.215, subdivision 4d.

(c) The prior service credit purchase amount may not be less than the amount determined by applying, for each year or fraction of a year being purchased, the sum of the employee contribution rate, the employer contribution rate, and the additional employer contribution rate, if any, applicable during that period, to the person's annual salary during that period, or fractional portion of a year's salary, if applicable, plus interest at the annual rate of 8.5 percent compounded annually from the end of the year in which contributions would otherwise have been made to the date on which the payment is received.

Thus, enactment of Minn. Stat. § 353.01, subd. 16b, has created both a benefit and a burden for Mr. Helwig. It gives him relief from the statutory deadline for purchasing service credits for military service that continues to exist in Minn. Stat. § 353.01, subd. 16. However, the Legislature has attached a condition to that deadline relief. Minn. Stat. § 356.551, subd. 16b, explicitly mandates the method for calculating payment for that service credit—namely, the actuarial value of the service credit to PERA's pension fund. The ALJ therefore concludes that PERA's statement that he was "eligible to purchase the service credit based on its actuarial value to the pension fund" was a correct statement of the law.

C. *Alabama Power Co. v. Davis* does not afford Mr. Helwig to purchase PERA service at its 1986 cost.

The case of *Alabama Power Co. v. Davis*³⁶ involved a refusal by an employer to give an employee, whose employment had been interrupted by a period of military service, any credit toward his pension for the time he spent in military service. In its analysis of the issue, the Court made a distinction between whether or not an employment benefit is an "incident of seniority" and therefore protected by Section of the Military Selective Service Act.³⁷ The employer argued that pension payments should be considered compensation for services rendered rather than "a perquisite of seniority." The Supreme Court rejected that argument and held that:

[P]ension payments are predominantly rewards for continuous employment with the same employer. Protecting veterans from the loss of such rewards when the break in their employment resulted from a response to the country's military needs is the purpose of s 9. That purpose is fulfilled in this case by requiring Alabama Power to pay Davis

³⁶ 431 U.S. 581 (1977) (*Alabama Power*).

³⁷ 50 U.S.C.A. App. §§ 459, 459(b, d).

the pension to which he would have been entitled by virtue of his lengthy service if he had not been called to the colors.³⁸

Mr. Helwig argues that his “situation comes squarely within the holding in *Alabama Power Co. v. Davis*” and supports his claim that “his PERA account ought to be credited with time in service at the City of Duluth for the four-year period when he was with the Marines.”³⁹ For the reasons set forth below, the ALJ disagrees.

First, unlike the employee in *Alabama Power*, Mr. Helwig had a statutory right to obtain PERA service credit for at least five years after he returned to work with the City. That five-year period expired in late May 1992. Moreover, beginning in 2000, the Legislature afforded him relief from that statutory deadline by enacting Minn. Stat. § 353.01, subds. 16a and 16b.⁴⁰ In fact, Minn. Stat. § 353.01, subd. 16b, continues to provide Mr. Helwig with statutory deadline relief until at least July 1, 2013. *Alabama Power* did not address whether an employer could set a deadline for when a returning veteran would be obliged to exercise a right to purchase pension service credit for military time, and that is not an issue in this proceeding.

Second, the issue of attaching a purchase obligation on a pension service credit for time spent in the military, particularly where there is an employee contribution, was neither raised nor decided in *Alabama Power*.

Third, the method for calculating Mr. Helwig’s service credit is established by statute and not merely by PERA policy or practice. Therefore, in order to prevail on the merits of his request for review, it would be necessary for Mr. Helwig to establish that Minn. Stat. §§ 353.01, subd. 16b and 356.551, subd. 2, as applied, are rendered void or unenforceable or are pre-empted by federal law. Unlike the district courts, neither the ALJ nor the PERA Executive Director or its Board of Trustees possesses general jurisdiction or inherent powers. They may only exercise powers and adjudicate issues that the legislature has constitutionally delegated them in a statute. The Legislature has never granted ALJs, the PERA Executive Director or its Board of Trustees jurisdiction to determine whether or not state statutes are rendered void or unenforceable or are pre-empted by federal law. If that is the nature of Mr. Helwig’s claim, he must pursue relief in a court of general jurisdiction.

C. Mr. Helwig is not entitled to equitable relief.

Finally, Mr. Helwig suggests that he may be entitled to some form of that relief because of what he claims was insufficient notice in June 1986 of his right to purchase a pension service credit based on his military service. Specifically, he requests that he be allowed to purchase his service credit “for the amount of money it would have cost had he been promptly informed of his right to do so when he returned to employment

³⁸ 431 U.S. at 594.

³⁹ Plaintiff’s Memorandum of Law, p. 3.

⁴⁰ As noted above, because of sunset provisions in Minn. Stat. § 353.01, subd. 16a, statutory deadline relief appears not to have been available for the period May 16, 2007, through May 27, 2008.

with the City of Duluth in June, 1986.”⁴¹ However, even if the facts of this case met the criteria for estoppel or other equitable relief, an equitable remedy may not be granted here. In *Mesaba Aviation Div. of Halvorson of Duluth, Inc. v. County of Itasca*,⁴² the Minnesota Supreme Court rejected application of the doctrine of equitable estoppel against a governmental entity, holding that “where an administrative officer has no authority to act, agency action cannot be made effective by estoppel.”⁴³ Applying that principle here, PERA cannot calculate Mr. Helwig’s service credit in a way that is contrary to the way that the law explicitly requires her to calculate that credit.

V. Conclusion

For the reasons discussed above, the ALJ concludes that Minn. Stat. § 353.01, subd. 16b, authorizes Mr. Helwig to submit an application to purchase a PERA service credit for the time he spent on active duty with the Marine Corps. However, if he chooses to do so, PERA must calculate the amount that Mr. Helwig must now pay to obtain his service credit in strict conformity with Minn. Stat. § 356.551, subd. 2. The ALJ therefore recommends that the PERA Board of Trustees grant the PERA Staff’s motion for summary disposition and deny Mr. Helwig’s motion for summary disposition.

B. H. J.

⁴¹ Plaintiff’s Memorandum of Law, p. 4.

⁴² 258 N.W.2d 877 (Minn. 1977).

⁴³ *Id.* at 879.